

## EXHIBIT 4

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# Freese & Goss<sup>PLLC</sup>

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ATTORNEYS AT LAW

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December 5, 2014

**Via Email**

Carol Traylor, Esq.  
**Cantey Hanger LLP**  
600 West 6<sup>th</sup> Street, Suite 300  
Fort Worth, Texas 76102

RE: Carol Cavness vs. Teresa Kowalczyk, M.D. et al., Cause No. DC-14-04220.

Dear Carol,

On November 24, 2014, our office received an electronic copy of Ethicon's privilege log. The submitted privilege log reflects 21,780 documents as currently withheld or redacted, totaling 5,788 pages of asserted privilege.

We intend to file a motion, pursuant to Tex. R. Civ. P. 193.4, requesting a hearing on many of Ethicon's objections and claims of privilege, as more particularly described below. We also will request an *in camera* review of those withheld or redacted documents.

The attached exhibit contains a subset of 1,570 privileged documents we intend to include in our request. In an effort to reduce the number of privilege challenges, these documents were isolated almost entirely from the period of July 13, 2011, to the time of filing, April 21, 2014, and exclude documents that appear to be related to intellectual property or research contracts. The referenced documents also relate to major events, time periods, or keywords; including the FDA advisory committee meeting, FDA correspondences and communications, 522 studies, commercial product viability, interactions with AdvaMed, and/or references to Prosima.

Please let me know if Ethicon will agree to withdraw its asserted privileges and produce the referenced documents. If I do not hear from you by Tuesday, December 9, 2014, I will assume Ethicon opposes the requested relief and will file the motion.

In addition, we intend to notice the deposition of a corporate representative regarding the matters set forth in the attached draft notice. Please provide me with convenient dates for the deposition during the month of January 2015.

Should you want to discuss any of the foregoing, please call me.

Sincerely,



Tim K. Goss

*Carol Traylor*  
*December 5, 2014*  
*Page 2 of 4*

TKG/ar  
Enclosures

cc:

**Via Email**

Philipa Remington

Cathryn Paton

Theibaud, Remington, Thornton, Bailey, LLP

**Via Email**

William C. Dunnill

Joel Steed

Steed, Dunnill, Reynolds, Murphy, Lamberth, LLP

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December 5, 2014  
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PI04113	PI14318	PI24594	PI11944	PI06360	PI06374	PI06841	PI06358	PI06464	PI06476	PI06470	PI15572	PI06200	PI16121	PI15566	PI06346	PI08402
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PL11635	PL12739	PL06756	PL12682	PL12261	PL06762	PL12348	PL17907	PL12154	PL12611	PL15517	PL16387	PL16691	PL20710	PL24469	PL25630	PL15876
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PL06555	PL12555	PL06341	PL15953	PL12570	PL12568											

CAUSE NO. DC-14-04220

CAROL CAVNESS,

Plaintiff,

v.

TERESA KOWALCZYK, M.D., BAYLOR  
HEALTHCARE SYSTEM, JOHNSON &  
JOHNSON and ETHICON, INC.

Defendants.

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§

IN THE DISTRICT COURT

95<sup>th</sup> JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF'S NOTICE OF ORAL AND VIDEOTAPED  
DEPOSITION OF CORPORATE REPRESENTATIVE**

TO ALL COUNSEL OF RECORD:

**PLEASE TAKE NOTICE** that pursuant to Rule 199.2 of the Texas Rules of Civil Procedure, Plaintiff will take the oral deposition of Johnson & Johnson on \_\_\_\_\_, 2014 at the offices of \_\_\_\_\_ at \_\_\_\_\_ a.m. Central Standard Time.

This deposition will be taken before a person authorized by law to administer oaths and will be recorded stenographically and by video and will continue day to day until completed. This deposition may be used for the purposes of discovery or for use as evidence at trial, or both.

Pursuant to Rule 199.2(b)(1), the deponent(s) shall be prepared to testify concerning the matters described in attached Exhibit A and, pursuant to Rule 199.2(b)(5), the deponent(s) is/are requested to produce at the deposition the documents listed on attached Exhibit A.

Respectfully Submitted,



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Texas Bar No. 08222660

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F: 214.722.2101

**ATTORNEYS FOR PLAINTIFF**



**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the foregoing discovery was served on all counsel of record in accordance with the Texas Rules of Civil Procedure as follows:

**Via Email: [premington@trtblaw.com](mailto:premington@trtblaw.com)**

**Via Email: [cpaton@trtblaw.com](mailto:cpaton@trtblaw.com)**

Philipa M. Remington

Cathryn R. Paton

THIEBAUD REMINGTON THORNTON

BAILEY LLP

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Dallas, TX 75202

**Attorneys for Defendant Teresa Kowalczyk,  
M.D.**

**Via Email: [joelsteed@sflawfirm.com](mailto:joelsteed@sflawfirm.com)**

**Via Email: [billydunnill@sflawfirm.com](mailto:billydunnill@sflawfirm.com)**

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William C. Dunnill

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**Attorney for Defendant Baylor Healthcare  
System**

**Via Email: [ctraylor@canteyhanger.com](mailto:ctraylor@canteyhanger.com)**

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**Attorney for Defendants Johnson &  
Johnson and Ethicon, Inc.**

Certified to the 20<sup>th</sup> day of November by:

  
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Tim K. Goss



**EXHIBIT "A"**

**DEFINITIONS AND INSTRUCTIONS**

The following Definitions and Instructions shall apply to the Notice of Deposition. To the extent a term commonly in use in the medical device industry is not defined herein, it shall be understood to be consistent with the meaning ascribed to that term in the medical industry.

1. "Concerning" means referring to, describing, evidencing, or constituting.
2. "Defendants", "Johnson & Johnson", "Ethicon", "you", or "yours" refers to, without limitation, Johnson & Johnson, Ethicon, and all business entities with which either company is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of any such other business entity previously described herein.
3. "Document" means and includes the original and all non-identical copies or drafts of the following items: agreements; drafts; e-mails; communications; correspondence: telegrams; cables; facsimiles; memoranda; records; books; financial statements; summaries of records or notes of personal conversations or interviews; diaries; calendars; forecasts; statistical statements; accountants' work papers; graphs; charts; maps; diagrams; blue prints; tables; indexes; pictures; recordings; tapes; microfilm; charge clips; accounts; analytical records; minutes or records of meetings or conferences; reports and/or summaries of investigations; opinions or reports of consultants; appraisals; reports and/or summaries of negotiations; brochures; pamphlets; circulars; trade letters; press releases; contracts; stenographic, handwritten or any other notes; projections; working papers; federal and state income tax returns; checks, front and back; check stubs or receipts; shipping documents; manifests; invoice vouchers; computer printouts and computer disks and tapes; and tape data sheets or data processing cards or disks or any other written, recorded, transcribed, punched, taped, filmed or graphic mattes; however produced or reproduced. Document shall also mean any and items described under Texas Rule of Civil Procedure 192.3(b).
4. "Pelvic Mesh Product" means any product that you developed, designed, distributed, licensed, manufactured, marketed or sold for the treatment of Pelvic Organ Prolapse (POP) or Stress Urinary Incontinence (SUI).
5. "Relevant Time Period" means the time period from when you first developed, designed, distributed, licensed, manufactured, marketed, or sold Pelvic Mesh Products to the present.
6. "Communication" means every manner or means of disclosures or exchange of information, regardless of means utilized, whether oral, written, electronic, or by document or otherwise, and whether fact-to-face, in a meeting, by telephone, mail, telex, discussion, release, personal delivery, or otherwise. Documents that typically reflects a "communication" include

letters, electronic mail, instant messages, handwritten notes, call logs, telephone memoranda, slips, daily appointment books and diaries, bills, checks, correspondence, and ,memoranda, and includes all drafts of such documents.

7. "Person" means any natural or artificial person, including business entities and other legal entities.

8. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive. The use of the word "including" shall be construed to mean "without limitation."

9. Reference to the singular in any of these requests shall also include a reference to the plural and reference to the plural shall include a reference to the singular.

10. "Relating to" or "related to" shall mean directly or indirectly supporting, evidencing, describing, mentioning, alluding to, referring to, contradicting, comprising or concerning.

11. All documents should be produced which are not subject to an objection and are known by, possessed or controlled by, or available to y9ou, or your attorneys, representatives, or other agents.

12. All documents are to be produced in their entirety, without abbreviation or redaction, including both front and back thereof, and all attachments or other matters affixed thereto.

13. These requests shall be deemed continuing so as to require further and supplemental production by you in the event you obtain or discovery additional documents between the time of responding to this subpoena and the time of any hearing or trial.

#### **DEPOSITION SUBJECT MATTER**

Pursuant to Rule 199.2(b)(1), the deponent(s) must have knowledge and shall be able to testify concerning the following subject matters:

1. Discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the July 13, 2011 Food and Drug Administration Update on Serious Complications Associated with Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse: FDA Safety Communication.

2. Discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the September 8-9, 2011

Obstetrics & Gynecology Devices Advisory Committee Meeting Surgical Mesh for Treatment of Women with Pelvic Organ Prolapse and Stress Urinary Incontinence FDA Executive Summary.

3. Discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the Food and Drug Administration Section 522 Order on or about January 2012 regarding any transvaginal mesh product.

4. Discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, plans, and/or decisions made regarding postmarket surveillance of any product after June 2011.

5. Discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made to potentially recall or remove or actually recall or remove from inventory any transvaginal mesh product.

#### **DOCUMENTS TO BE PRODUCED**

1. The witness(s) most recent resume or curriculum vitae.
2. All documents concerning discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the July 13, 2011 Food and Drug Administration Update on Serious Complications Associated with Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse: FDA Safety Communication.
3. All documents concerning discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the September 8-9, 2011 Obstetrics & Gynecology Devices Advisory Committee



Meeting Surgical Mesh for Treatment of Women with Pelvic Organ Prolapse and Stress Urinary Incontinence FDA Executive Summary.

4. All documents concerning discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made regarding the Food and Drug Administration Section 522 Order on or about January 2012 regarding any transvaginal mesh product.
5. All documents concerning discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, plans, and/or decisions made regarding postmarket surveillance of any product after June 2011.
6. All documents concerning discussions, positions taken, communications internally and with persons or entities outside J&J/Ethicon/Gynecare, and/or decisions made to potentially recall or remove or actually recall or remove from inventory any transvaginal mesh product.